# THE PATH FORWARD RETHINKING FEDERAL MARIJUANA POLICY

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REP. EARL BLUMENAUER

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#### **Forward**

Four years ago I drafted a report, *The Path Forward*, to help guide my thinking on an issue I've championed since 1973. As a young legislator in Oregon, I supported the decriminalization of small amounts of marijuana. This law was the first of its kind in the United States. That same year, I joined in the debate and voted in support of legislation to legalize adult-use marijuana, when Oregon became the first state to consider legalization. Although that bill did not pass, it launched my commitment to end our country's disastrous experiment with marijuana prohibition.

Events have accelerated since the first report was circulated – 8 states have approved adult-use of marijuana and more than 250 million Americans have legal access to some form of cannabis.

The path forward has never been more clear: it's past time for the federal government to end the failed war on drugs and allow states to continue to take the lead in the regulation of cannabis.

# **Executive Summary**

Decades of advocacy to end the costly federal marijuana prohibition came to a head in November 2012 when the citizens of Washington and Colorado voted to legalize the drug for adult-use. Two years later, Oregon, Alaska and the District of Columbia voters passed legalization measures. In the most recent election, four more states—Massachusetts, California, Maine, and Nevada—legalized adult-use marijuana. Also in 2016, four states approved medical marijuana measures, with Florida being the first southern state to approve medical marijuana.

These developments continue to play out against the backdrop of the least effective, most questionable, and arguably most destructive front of America's "War on Drugs." Marijuana has been classified as a Schedule I controlled substance for decades—meaning that, as defined by the Controlled Substances Act, it has a "high potential for abuse" and possesses "no currently accepted medical use in treatment in the United States." Other drugs in this category include heroin and LSD.

Oregon was on the forefront of the movement to rationalize marijuana laws. In 1973, Oregon became the first state to consider legalizing marijuana for adult-use. Although that vote in the Oregon House failed, legislation was passed that made the penalty for possession of small amounts of marijuana equivalent to a traffic ticket.<sup>2</sup> In the 43 years that followed, 20 other states, Guam, and the District of Columbia also adopted policies that removed the criminal penalties for simple possession.<sup>3</sup>

Starting with California in 1996, states began legalizing medical marijuna.<sup>4</sup> The therapeutic qualities of marijuana have since proved persuasive in states across the country and people across the political spectrum. The movement to allow medical marijuana has gained more momentum and legitimacy, with a total of 28 states and the District of Columbia enacting laws allowing for the legal use of medical marijuana.<sup>5</sup> An additional 16 states have passed laws permitting the use of certain strains of marijuana with low Tetrahydrocannabinol (THC), the psychoactive component found in cannabis, and higher Cannabidiol (CBD), another compound in marijuana that has been anecdotally linked to helping control seizures.<sup>6</sup>

The final wave has been the growing acceptance of adult marijuana use. National support for adult-use passed the 60% mark in reputable national polls and over 80% of the U.S. population now supports legal access to medical marijuana.<sup>7</sup>

With these changes, many business owners have entered this emerging industry, only to find they face a complicated patchwork of conflicting state and federal laws. Notably they are prevented from having bank accounts which cause them to operate cash-only businesses, raising serious safety questions. Despite these challenges, this cannabis industry is one of the fastest growing sectors of the U.S. economy, creating jobs, tax revenue and local economic activity in legal markets across the country.

The continued use of marijuana laws to ensnare otherwise law-abiding citizens in the criminal justice system has been particularly harmful to young men of color. Millions of people have been brought into the justice system for marijuana offenses. There are far too many instances of a

young person's future opportunities (access to financial aid, public housing assistance, job opportunities) being seriously damaged as a result of a citation or arrest for possession or use of a drug that is legal for medical use in more than half of U.S. states.

Over 95% of the American public now live in jurisdictions that have endorsed the use of marijuana in some form, and most live in states where these laws passed by a vote of the people.<sup>8</sup>

In a time of rapid transition for marijuana policies, the federal policy framework regarding marijuana use should be addressed to reduce confusion, uncertainty, and conflicting government action. Maintaining the status quo creates an inconsistent legal environment with law enforcement resources wasted and potential tax revenues lost.

Marijuana prohibition does not protect children, or prevent millions of Americans from using it in states that have not yet acted to reform ineffective, outdated and harmful laws.

Instead, the lack of regulation creates a more dangerous environment for everyone, especially children. Under the current system, no one needs to show ID to obtain marijuana in the states where it remains illegal. Regulation is necessary to fight the illegal market. The enforcement of failed marijuana laws is a misuse of public safety resources that could be better spent actually keeping communities safer.

Americans realize this. This is why people have taken action through state and local efforts that are creating a new reality. Despite its widespread use and state legalization, all types of marijuana continue to be illegal under federal law. Congress has the power to unravel this mess, and the last four years have seen significant progress in this area.

What follows is a summary of the history and facts surrounding marijuana, its use and regulation, as well as a plan for a common sense path forward. The goal is to deal with the inevitable transition of marijuana policies and legalization — a transition is not just already well under way, but one that has passed the point of no return.

# What are Marijuana and Hemp?

Marijuana is the dried leaves, flowers, stems, and seeds from the *Cannabis sativa* plant. Because of its psychoactive and physiological properties, marijuana can be consumed medicinally or recreationally. The primary psychoactive ingredient is *delta-9-tetrahydrocannabinol* (THC).<sup>9</sup>

Several additional biologically and therapeutically active – but not psychoactive – compounds are also found in the plant. <sup>10</sup> Medicinally, cannabis can be used to treat pain, lack of appetite, nausea associated with disease and medication, and many other conditions. As a drug, the main effects of marijuana vary, but it is most often sought after for its euphoric and anti-anxiety properties.

Hemp, a variety of the cannabis plant that contains

low levels of THC, has many industrial uses. It can be readily used to create sustainable, useful products like rope, cloth, oil, wax, and fuel. It can even be eaten. Because it produces negligible amounts of THC, it does not have psychoactive properties. Hemp products are perfectly legal and widely used in every state. One of the consequences of our contradictory federal policy is that any hemp used in U.S. products must be imported. Most American farmers can no longer grow this helpful plant that was a staple for centuries because the cultivation of hemp is prohibited, with a few exceptions, by federal law.

# A Brief History of Cannabis in the United States

The cannabis plant's economic importance in America dates back long before the birth of our nation to the 17<sup>th</sup> century, when it was used in the production of rope, sails, and clothing. In 1619 the Virginia Assembly passed legislation requiring farmers to grow hemp, and in Pennsylvania, Virginia, and Maryland, hemp could be exchanged as legal tender. Both George Washington and Thomas Jefferson grew hemp on their land in Virginia. Later, during WWII, the U.S. Department of Agriculture created the "Hemp for Victory" program that encouraged Americans to grow hemp to assist with the war effort, even providing seeds and draft deferments. <sup>11</sup>

In the late 19<sup>th</sup> century, marijuana was introduced into western medicine and sold openly in pharmacies as a sedative and to reduce inflammation and muscle spasms. With the turn of the 20<sup>th</sup> century, Mexican immigrants introduced marijuana for use in the United States.



During Prohibition and the Great Depression, public and government concern regarding the potential harm of marijuana began to grow. A series of anecdotal, nonscientific reports linked the use of marijuana to violence, insanity, crime, and social deviance. Much of the rehetoric used during this push to restrict marijuana use was borne out of xenophobia and racism, rather than evidence or actual events. The film *Reefer Madness* is a prime example of this era's ongoing anti-marijuana propaganda.



By 1931, cannabis was outlawed in 29 states, and in 1937, Congress passed the Marihuana Tax Act that restricted possession of the drug to individuals who paid an excise tax on certain medical and industrial uses. It was not until 1942, however, that cannabis was removed from the U.S. Pharmacopoeia, the nation's official roster of medicines. Less than a decade later, Congress passed the Boggs Act which labeled cannabis as a narcotic and established minimum sentences for marijuana-related offenses. A first-offense marijuana possession carried a minimum sentence of two to ten years in prison and a fine of up to \$20,000. In spite of these harsh laws, marijuana was widely used and heavily associated with

the counterculture and American jazz movements during the 1950s and 1960s. Musical and cultural icon Louis Armstrong faced legal problems and a brief stint in jail due to his use of marijuana.

In the 1970s, the President Nixon's war on drugs started with the passage of the Controlled

Substances Act. If a rigorous and honest analysis had been done, tobacco would have been listed as a Schedule I controlled substance because of its powerful addictive properties and deadly health effects. Instead, tobacco has remained a legal substance, likely due to its widespread use and established economic interests in the industry. Marijuana, however, was classified as a Schedule I controlled substance, defined as having a high potential for abuse and no medicinal value. This is the same classification as heroin and LSD. Cocaine and amphetamines were classified as Schedule II substances despite being dangerous and highly addictive. At the same time, Congress repealed the mandatory minimums sentencing requirements created in the Boggs Act, recognizing their failure to eliminate widespread marijuana use throughout the 1960s. <sup>13</sup>

Nixon's war on drugs was far more political than scientific, a product of his animous for counterculture. In fact, in 1972, the Shafer Commission, appointed by President Nixon at the direction of Congress, authored a report recommending that marijuana be decriminalized. While federal policy did not change as a result of the report, 16 states – beginning with Oregon – decriminalized the personal use of marijuana, treating first-time possession of a small amount more like a traffic offense than a crime.

The 1980s marked a return to a more aggressive approach to marijuana. New laws elevated federal penalties for marijuana possession. Distribution of 100 marijuana plants carried the same potential penalty as possession of 100 grams of heroin. Around the same time, however, the federal government initiated the Compassionate Investigational New Drug program, which allowed a small number of individuals to receive medical marijuana from the federal government. The program began in 1976 and accepted its last new patient in 1991. Four patients remain grandfathered in and receive approximately eight to nine ounces of medical marijuana each month.

Medical research of marijuana remains a casualty of the War on Drugs. The federal government has tightly restricted legal access to marijuana for research purposes. Virtually all the supply was dedicated to projects showing the harm of marijuana, not its benefits, such as medical and healing applications.

A major breakthrough occurred in 1996, when California voters passed Proposition 215 and California became the first state to allow the sale and medical use of marijuana for patients with AIDS, cancer, and other diseases. <sup>14</sup>

Since then, 28 additional jurisdictions have passed laws allowing medical marijuana programs, most through voter initiatives. An additional 17 states have passed laws allowing for the use of certain strains of marijuana with very low THC, the psychoactive component found in cannabis.

All medical marijuana laws remove state criminal penalties for certain categories of conduct. Each state's law is structured differently and all face challenges associated both with how to best control and regulate distribution and access, especially since marijuana remains a Schedule I substance and is illegal to cultivate, distribute, or possess under federal law.

These challenges were compounded in November 2012, when voters in Colorado and Washington passed initiatives that legalized the recreational adult use of marijuana. Both initiatives were approved with more than 55% of the vote. <sup>15</sup> In August 2013, the U.S.

Department of Justice, under the Obama Administration, indicated that it would not interfere with the implementation of these laws so long as the regulatory systems were robust and protected federal enforcement priorities.

In November 2014, the legalization movement took another huge step as Oregon, Alaska and the District of Columbia all legalized adult-use marijuana. These very different states approved their own measures by comfortable margins. The Oregon measure passed with 56.1% of the vote, Alaska with 53.2%, and Washington, D.C. with 70%.

In 2016, momentum for legalization continued as Massachusetts, California, Maine, and Nevada legalized the adult use of marijuana. Massachusetts won with 54% of the vote, California with 56% of the vote, Nevada with 54% and Maine won by just over 4,000 votes. Additionally, Florida approved medical marijuna use with 71% of the vote, in North Dakota with 64% and in Arkansas with 53%.

# The Facts about Marijuana

- Marijuana is the third most popular recreational drug in America, behind alcohol and tobacco.
- More than 43% of adult Americans have used marijuana at some point in their life, and 13% claim to be currently using marijuana (known as past month users). 16
- Approximately 22 million Americans have used marijuana within the last month.<sup>17</sup>
- Marijuana remains illegal at the federal level, which makes it the most commonly used illegal drug used in the United States.
- Marijuana is less addictive than both alcohol and tobacco <sup>18</sup>



- A 1999 study by the Institute of Medicine showed that 32% of tobacco users, 23% of heroin users, 17% of cocaine users, and 15% of alcohol drinkers become dependent. In comparison, only 9% of marijuana users become dependent.
- Other drugs that are currently legal, such as alcohol, tobacco, and prescription drugs, have significant negative public health effects:
  - o Approximately 88,000 people per year die related to excessive alcohol use. 20
  - Over 10,000 people a year are killed in alcohol-impaired driving accidents.<sup>21</sup>
  - Alcohol can lead to cirrhosis of the liver, general poor health, and antisocial and often illegal behavior including violence.<sup>22</sup>
  - o More than 480,000 deaths each year are attributed to smoking tobacco.<sup>23</sup>
  - Since 2003, prescription drug overdoses have killed more people than heroin and cocaine combined, and their abuse is now America's fastest growing drug problem.<sup>24</sup>
  - By comparison, access to marijuana appears to be connected to positive health outcomes. In 2015, a National Bureau of Economic Research working paper found that the presence of marijuana dispensaries was associated with a 15% to 35% decrease in substance abuse admissions and a similar drop in opiate overdose deaths.<sup>25</sup>
  - In 2014, a study in the Journal of the American Medical Association Internal Medicine found that states with medical marijuana laws saw a 24.8% reduction in opioid overdose deaths, compared to states without such laws.<sup>26</sup>
- More than 65 million Americans, or 21% of the population, live in a state that has approved adult-use marijuana.
- More than 62% of Americans live in a state with legal access to medical marijuana. More than 201 million people live in either the 8 states (plus Washington, D.C.) allowing adultuse marijuana or 21 states with state-legal medical marijuana.
- If you include the additional 17 states that allow limited access to medical marijuana (CBD only), that number grows to 316 million people (98% of the population) with access to some form of marijuana (46 states plus the District of Columbia).

## The Costs of the War on Marijuana

The war on marijuana is waged at a tremendous cost of money and impact on human lives. In 2015, law enforcement agencies made 574,641 citations or arrests for small quantities of marijuana intended for personal use.<sup>24</sup> Despite the steep decline in crime rates over the last two decades — including a 36% drop in violent crime arrests from 1995 to 2015 — the number of arrests for all drug possessions, including marijuana, increased 13%. There were 13.6% more marijuana arrests during this period than for arrests made for all violent crimes, including murder, rape and serious assaults combined.<sup>27</sup> That is the equivalent of one person arrested for drug possession every 25 seconds. It has been estimated that enforcement of federal marijuana laws (including incarceration) costs at least \$5 billion dollars each year and that states spend \$3.6 billion enforcing federal marijuana laws.<sup>28</sup>

Such costs are not evenly distributed across racial and economic lines. The war on marijuana has had an overwhelmingly disproportionate impact on communities of color. According to the American Civil Liberties Union (ACLU), between 2001 and 2010, there were more than eight million marijuana-related arrests in the United States. Marijuana use is roughly equal among Blacks and Whites, yet Blacks are more than four times as likely to be arrested for marijuana possession. The disparities can be stark and not just where one would suspect. In Manhattan, where Blacks make up about 15% of the population, they are nearly 11 times as likely as Whites to be arrested for drug possession.<sup>26</sup>

As marijuana legalization has become more widespread, there has been a concerted effort to address the negative impacts of the war on drugs for minorities. In 2015, Oregon was the first state to proactively reduce sentencing and provide a pathway to expungement of most marijuana crimes.<sup>29</sup> The legalization ballot measures in California and Massachusetts both included provisions for sentence reduction and record expungement of marijuana-related offenses that would no longer be crimes in their states.

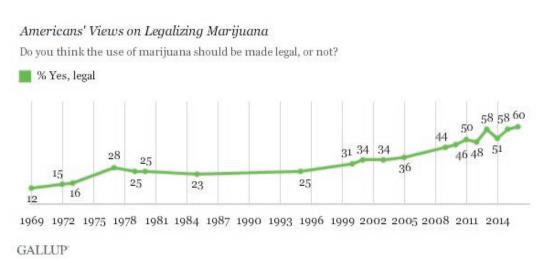
There have also been dramatic costs—financial and personal—associated with the illegal market for marijuana in the United States and Latin America. Much of the marijuana consumed in the United States from the illegal market has been grown in Mexico, providing drug cartel coffers with billions of dollars annually.<sup>30</sup>

While marijuan comprises only part of the overall drug traffic coming from Mexico, it has been a significant source of revenue for Mexican cartels. However, the amount of marijuana seized at the Mexico border by government officials has dropped 37% since 2011, the same time period when legally grown marijuana has become more available in the United States.<sup>31</sup>

Undercutting these cartels could bring greater stability to the region and reduce the violence that has resulted in an estimated 100,000 drug trafficking-related deaths since 2007.<sup>32</sup> It should be noted that U.S. taxpayers have given Mexico \$2.4 billion in military and judicial aid over the past six years to combat drug cartels.<sup>33</sup>

**Shifting Public Opinion on Marijuana** 

There has been a sea change in public opinion over time, up from 12% support in 1969 when the issue was first polled. While the U.S. government has spent billions of dollars incarcerating citizens because of marijuana offenses, more than 60% of the American public now believes that marijuana should be legalized. According to a 2016 Gallup poll, 60% of Americans now support legalization of cannabis for adult use, up from 36% in 2005. 34 Among young Americans the numbers are even higher in support of marijuana policy reform.<sup>35</sup>



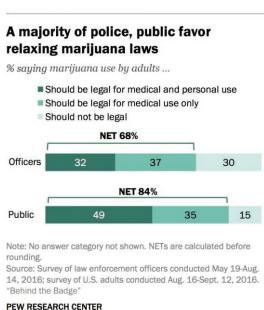
The American public supports medical marijuana even more strongly, with 89% of U.S. voters supporting adults to legally using marijuana for medical purposes if prescribed by a doctor. Medical marijuana is a nonpartisan issue: 81% of Republicans, 94% of Democrats, and 93% of Independent voters are in support of legalizing it. <sup>36</sup>

Most telling: recent surveys indicate that 73% of Americans believe that federal marijuana laws should not be enforced against people acting in compliance with state law.<sup>37</sup>

Additionally, 56% of Americans think marijuana use is socially acceptable.<sup>38</sup>

And, a greater percentage of Americans say that marijuana is less risky than tobacco, alcohol, or other drugs.<sup>39</sup>

The shift is not just happening in the general population. Current polls show that the majority of police favor relaxing marijuana laws. 40



# Medical Marijuana

Medical marijuana is used to treat nausea, loss of appetite, muscle tension or spasms, chronic pain, and insomnia. It has often been used to treat these symptoms in patients suffering from cancer and the side effects of chemotherapy, HIV, neurological disorders, Post Traumatic Stress (PTS) and other serious conditions. Despite the lack of extensive medical research, anecdotal evidence suggests a wide array of benefits.

Since California's first medical marijuana law in 1996, 29 additional jurisdictions have passed laws that allow the use of medical marijuana by certain patients at the recommendation of a physician. An additional 17 states have passed laws allowing for the use of certain strains of marijuana with low THC, the psychoactive component found in cannabis, and higher CBD, another compound found in marijuana that has been linked to helping control seizures. It's estimated that there are



between 1.3 and 2.3 million medical marijuana patients nationwide, treated for a wide variety of ailments. 41, 42

The content and administration of state medical marijuana laws vary widely. Many states limit the amount of marijuana a patient can possess at any one time and specify how they can obtain medical marijuana. Some states allow for large commercial or not for profit dispensaries, while others allow patients to grow marijuana themselves or designate a grower to supply their medicine.

In California, commercial dispensaries are regulated on the local level, rather than by the state. In 2015, the state established a licensing and regulatory framework for medical marijuana, to increase transparency, tracking and oversight of their medical marijuana program. <sup>43</sup> In Colorado, both medical and adult-use dispensaries are heavily regulated by the state. Owners must undergo criminal background checks, subject their business practices to regular inspection for possible ties to criminal activity and marijuana facilities must have continuous video monitoring. <sup>44</sup>

Some states do not allow dispensaries at all, but specify conditions for how a patient may obtain marijuana. Before Oregon passed its dispensary law in 2013, for example, the state only allowed patients to grow marijuana themselves, or designate a grower to do so for them. Under this model, each patient was allowed up to six marijuana plants and growers could grow marijuana for up to four people. Such small-scale operations have the advantage of not running afoul of the federal 100-plant sentencing and enforcement trigger. Washington's medical marijuana program is similar. However, this approach poses a greater challenge for state monitoring and regulation. In addition, the system can be confusing, and finding a grower can be difficult, forcing many patients into the illegal market.

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The following chart outlines which states allow for medical marijuana or more limited medical marijuana, how and when these laws passed, and if the state also allows for adult use of marijuana.<sup>45</sup>

State	Year First Passed	Passed By	Adult Use	Medical	CBD Only	Decriminalization
Alabama	2014	Legislature			<b>√</b>	
Alaska	1998, 2014	Voters	<b>√</b>	<b>√</b>		✓
Arizona	2010	Voters		<b>√</b>		
Arkansas	2016	Voters		<b>_</b>		
California	1996, 2016	Voters	<b>√</b>	<b>√</b>		<b>✓</b>
Colorado	2000, 2012	Voters	<b>√</b>	<b>√</b>		
Connecticut	2012	Legislature		<b>√</b>		<b>✓</b>
DC	2010	Legislature/Voters	$\checkmark$			<b>✓</b>
Delaware	2011	Legislature		<b>√</b>		<b>√</b>
Florida	2016	Voters		<b>√</b>		
Georgia	2015	Legislature			<b>√</b>	
Guam	2014	Legislature		<b>√</b>		
Hawaii	2000	Legislature		<b>√</b>		
Illinois	2013	Legislature		<b>√</b>		<b>√</b>
Indiana	2017	Legislature			<b>✓</b>	
Iowa	2014	Legislature			<b>√</b>	
Kentucky	2014	Legislature			<b>√</b>	
Maine	1999, 2016	Voters	<b>√</b>	<b>√</b>		<b>✓</b>
Maryland	2014	Legislature		<b>√</b>		<b>√</b>
Massachusetts	2012, 2016	Voters	$\checkmark$			$\checkmark$
Michigan	2008	Voters		<b>√</b>		
Minnesota	2014	Legislature		<b>√</b>		<b>√</b>
Mississippi	2014	Legislature			<b>✓</b>	<b>✓</b>
Missouri	2014	Legislature			<b>√</b>	<b>√</b>
Montana	2004	Voters		<b>✓</b>		
Nebraska	1979	Legislature				<b>√</b>
Nevada	2000, 2016	Voters	$\checkmark$	<b>√</b>		<b>✓</b>
New Hampshire	2013	Legislature		<b>√</b>		
New Jersey	2010	Legislature		<b>√</b>		
New Mexico	2007	Legislature		<b>√</b>		
New York	2014	Legislature		<b>√</b>		<b>√</b>
North Carolina	2014	Legislature			<b>√</b>	<b>√</b>
North Dakota	2016	Voters		<b>√</b>		
Oklahoma	2015	Legislature			<b>√</b>	
Ohio	2016	Legislature		<b>√</b>		<b>√</b>
Oregon	1998, 2014	Legislature/Voters	<b>√</b>	<b>√</b>		<b>√</b>
Pennsylvania	2016	Legislature		$\checkmark$		

State	Year First Passed	Passed By	Adult Use	Medical	CBD Only	Decriminalization
Rhode Island	2007	Legislature		<b>√</b>		<b>✓</b>
South Carolina	2014	Legislature		<b>√</b>		
Tennessee	2015	Legislature			<b>√</b>	
Texas	2015	Legislature			<b>√</b>	
Utah	2014	Legislature			<b>√</b>	
Virginia	2017	Legislature			<b>√</b>	
Vermont	2004	Legislature		<b>√</b>		<b>√</b>
Washington	1998, 2012	Voter Initiative	$\checkmark$	<b>√</b>		
West Virginia	2017	Legislature		<b>√</b>		
Wisconsin	2014	Legislature			<b>√</b>	
Wyoming	2015	Legislature			<b>√</b>	

## Legalization of Adult-Use Marijuana

In November 2012, Colorado and Washington voters passed initiatives legalizing adult-use marijuana, moving the conversation beyond medical marijuana. In both states, the initiatives retained existing medical marijuana laws.

In Colorado, voters passed Amendment 64 with 54.8% of the vote, allowing someone 21 years or older to possess up to one ounce of marijuana or grow up to six plants for personal use. <sup>46</sup> In Washington, voters passed Initiative 502, with 55.7% of the vote, which also permitted individuals 21 years or older to possess up to one ounce of marijuana. <sup>47</sup> Marijuana facilities were authorized to grow and sell marijuana with state licensing.

Despite claims and fears of the impacts of legalization, regulation has been widely acknowledged as successful. Use of marijuana by young people is reported to have gone down, not up. Citations for driving while intoxicated have not significantly increased, despite fears. The criminal market for marijuana in Colorado has decreased significantly and 58% of marijuana sales are now in the regulated market. Colorado generated \$135 million in cannabis taxes and licenses fees in 2015, a 77% increase over the \$76 million the state raised in 2014.

Oregon, Alaska, and the District of Columbia all legalized marijuana in November 2014. Since that election, however, Congress included language in the Fiscal Year (FY) 2015 Omnibus bill to block Washington, D.C. from implementing a structure to tax and regulate adult-use marijuana. This is a setback that disrespects the will of the District of Columbia voters and should be repealed as soon as possible.

While there have been challenges, each state continues to refine their programs. These juridictions have created unique systems for cultivation, sale, and use of marijuana under a taxed and regulated market. With these new regulatory systems, millions in revenue has been collected, marijuana use by youth has stabilized, and public safety problems have not materialized.

In these states, the public use of marijuana remains illegal, except in the City of Denver, which recently passed an ordinance to allow public consumption of marijuana in designated areas. This prohibition of public use, while often thought necessary politically, creates a variety of enforcement and equity problems. Many of these state legislatures are considering possible solutions.

# **Economic Impacts of Legal Marijuana**

The legal cannabis market is one of the fastest growing industries in the country. It is estimated that national legal marijuana sales grew from \$4.6 billion in 2014 to \$5.5 billion in 2015. In 2016 the legal marijuana industry produced an estimated \$7.2 billion in economic activity, with marijuana businesses paying millions of dollars in federal income tax. This industry is expected to produce nearly 300,000 jobs by 2020 and grow to \$24 billion by 2025. 50

Tax revenue is exceeding expectations in every adult-use state. In 2016, the Oregon Department of Revenue collected \$60.2 million in tax receipts from adult-use cannabis businesses. <sup>51</sup> That is over \$40 million more than projected for the first year of legal sales. In 2017, states are projected to generate \$745 million in taxes on retail sales. Of which, \$609 million will be from cannabis specific taxes and \$136 million from state sales taxes that are applied on all retail sales. <sup>52</sup> Recent estimates project that if all currently legal states for medical or adult-use continue their projected growth, they could generate \$2.3 billion in state tax revenue from retail sales by 2020.

Though national numbers on employment data are not yet tracked at the federal level, it is clear that the jobs created directly and indirectly in adult-use and medical businesses are significant. In Colorado, it is estimated that there were 12,591 jobs in the cannabis industry in 2016. In the first month of legal adult-use marijuana sales in Oregon, there were over 2,100 jobs created in the retail sector alone.<sup>53</sup> The economic impact of legal cannabis for state and local governments is substantial. Federal intervention in legal cannabis markets would lead to significant economic costs for state and local jurisdictions in both medical and adult-use states across the country.

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# The Federal Policy on State Marijuana Laws

The Federal Controlled Substance Act created five regulated substance categories, theoretically based on potential for abuse and medicinal value. Schedule I, the most controlled category, is defined as having a high potential for abuse and no medicinal value, and is illegal to cultivate, possess and distribute under any circumstances, with the exception of federally-approved research.



Marijuana was classified as a Schedule I substance in 1970 under the Act, along with heroin and LSD. This classification level has remained despite widespread medicinal use and ample evidence that

it is far less addictive and damaging than other Schedule I drugs. Indeed, it is less dangerous and addictive than methamphetamine and cocaine, both listed as Schedule II drugs.

There are two ways to change the classification of a substance. Congress can simply pass a law changing the classification. Or the Administration can initiate the process, either through petition or by recommendation of the Attorney General or the Secretary of Health and Human Services, can also initiate a review. The second route would trigger an official analysis of available science to determine if a rescheduling is appropriate.

To date, there have been many official petitions requesting the rescheduling of marijuana. All have been denied based primarily on a lack of scientific evidence demonstrating medicinal value. The lack of scientific evidence, however, is a direct result of federal law making conducting research on medical marijuana very difficult. This has created a Catch 22 situation. Bipartisan legislation, described in more detail in the final section of this report, has been introduced to break the federal logiam which prevents research from proceeding.

In February 2014, 18 members of Congress asked the Administration to reschedule marijuana. While not a formal petition, it suggests a changing sentiment in Congress. In the past three years, more and more members openly challenge the Schedule 1 classification.

In August 2016, the DEA, in consultation with the FDA, rejected petitions for a rescheduling of marijuana submitted by the governors of Washington and Rhode Island and a health provider from New Mexico. Their rejection stipulated that there was not enough medical evidence to make a determination that the drug or any derivative was appropriate for medical use and safe without a clinical trial. As stated above, federal impediments to that research is the main reason the evidence is not available. Upon the rejection of the petition to reschedule, the DEA did remove obstacles to researching marijuana, but many barriers remain to scientific research.<sup>54</sup>

In the absence of rescheduling or descheduling marijuana, the federal government has struggled to enforce federal marijuana laws in states that have approved its use. Anyone in possession of marijuana is breaking federal law, despite a state medical marijuana card or buying marijuana from a licensed store in legal adult-use states. However, over the years, the federal government has taken varying positions as to how and where they will enforce federal law on this front, considering limited resources and the will of the voters in the states.

Prior to 2009, most administrations had very tough stances on marijuana laws. It can be argued that this was a significant reason that many of the early medical marijuana states had looser regulations than current medical marijuana laws, with optional patient registries and growing-your-own marijuana options that are not as easily monitored.

In 2009, the Obama Administration began to deviate from these previous policies. At the time, 14 states had passed medical marijuana laws despite federal prohibition. The DOJ sent a memo to federal prosecutors, encouraging them to deprioritize prosecuting individuals "whose actions are in clear and unambiguous compliance with existing state laws providing for the medical use of marijuana." Instead they were to focus on providers who violate both state and federal law, and those who operate medical facilities as a front for criminal activity. This letter is commonly referred to as the "Ogden Memo." As a result, many states moved forward with enacting medical marijuana laws and establishing systems for regulating production and distribution.



In 2011, the DOJ further clarified its policy with a memo stating that laissez-faire approval did not apply to large-scale commercial operations that cultivate, sell or distribute marijuana, regardless of whether or not they are in compliance with state law. <sup>56</sup> DOJ claims that many of these facilities were operating as fronts for criminal activity, a result of insufficient state regulation. The federal government then followed by enforcing federal law relating to medical marijuana, and facilities across the country were raided by the DEA or otherwise targeted by the DOJ. <sup>57</sup>

The Obama Administration's policies were altered in the aftermath of the passage of full legalization measures in Washington and Colorado. In response to whether President Obama would enforce federal law in legal marijuana states, he responded in a December 2012 interview saying that, "we have bigger fish to fry." Then in August 2013, the DOJ issued a memo to local U.S. Attorneys instructing them not to prosecute individuals producing, distributing or possessing marijuana in the states where it is legal, so long as the states implement a rigorous regulatory system. It required an enforcement mechanism that protects certain federal government priorities, <sup>58</sup> including not distributing to minors, or trafficking other controlled substances.

Following this, in February 2014 the Obama Administration released guidance to banks, with the purpose of creating a framework by which they can provide banking services to marijuana businesses without breaking federal banking laws.

In December 2014, the federal government took another huge step forward, by announcing that it would not block Tribal governments from growing and selling marijuana on sovereign Indian lands, even in states where marijuana is not yet legal.

Also in December 2014, Congress included language in a FY 2015 spending bill blocking DOJ and DEA from enforcing federal marijuana laws in contravention of state medical marijuana programs, bolstering the existing policy, and for the first time, codifying support into law

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regarding state medical marijuana laws. In August 2016, in *United States v. McIntosh*, the Ninth Circuit Court of Appeals ruled that the DOJ cannot prosecute those that are in compliance with state medical marijuana law.<sup>59</sup>

The future of enforcement under the Trump Administration remains unclear. At the time of this report, the administration has hinted at possible increased enforcement against adult-use marijuana, but have also noted their agreement with memos issued by the Obama Administration. While the Trump Administration may revisit these issues, support from the public and Congress continues to grow.

# **Challenges**

Conflict Between State and Federal Law

Federal law continues to define marijuana as an illegal controlled substance despite the fact that 28 jurisdictions allow medical marijuana, 10 jurisdictions with legalized adult use and an increasing number of Americans supporting legalization. There are a number of consequences associated with this conflict.

#### Enforcement

During the Obama Administration, the DOJ indicated that as long as states establish regulatory and enforcement mechanisms that protect federal enforcement priorities, the DOJ would seldom interfere in state regulated marijuana programs. Although this was a welcome step, strict enforcement of marijuana laws will only become increasingly difficult, and costly. However, the DOJ's most recent position is only guidance, and it may well be that the Trump Administration does pursue enforcement against questionable operations while not engaging in broader enforcement.

The 2014 appropriations language that Congress included in the FY 2015 spending bill (also included in both FY 2016 and FY 2017) blocks the DOJ and DEA from enforcing federal marijuana laws when a state has a medical marijuana program. This is not a permanent solution and does not answer all the necessary questions. Since it only applies to medical marijuana, it leaves uncertainty surrounding states that have legalized adult use of marijuana. Additionally, this provision will need to be revisited annually. There is significant support in Congress and among the public for the federal government to not intervene in legal, regulated marijuana programs.

As long as marijuana is illegal under federal law, the enforcement by federal officials in states with different laws will always remain a potential area of conflict. The actions of the DEA expanding the opportunities for institutions to produce and research marijuana could ultimately pave the way for a potential rescheduling as well as much-needed research for medical use. <sup>61</sup>

#### Federal Tax Challenges

In 1982, Congress by enacted section 280E of the federal tax code in response to a drug dealer claiming a yacht and weapons purchases as business expenses. Section 280E denies anyone trafficking in a Schedule I or II substance the ability to deduct business expenses from their taxes. Congress did not foresee legitimate adult-use marijuana – businesses that would operate in compliance with state laws and still be subject to Section 280E. These businesses often pay a tax rate in the range of 65-75%, compared to 15-30% for similar businesses, creating a burden that can often put small dispensaries out of business. Complicating matters, many state tax systems link to provisions in the federal tax code. In these situations, even where marijuana businesses are legal, their expenses cannot be deducted from state taxes.

This unfair, punitive federal taxation have placed on state-legal marijuana businesses in a quandary. Some pay the tax. Others use "creative" accounting practices. Some just wait for

clarification or enforcement. Eliminating this unjust provision will encourage better compliance with federal authorities and produce more revenue for the federal government.

#### Banking and Business Challenges

Federal banking provisions make it very difficult for any business dealing with marijuana to obtain a loan or register an account with a bank. Most banks do not take on the risk or even raise concerns, in fear of federal prosecution. Therefore, many marijuana businesses have difficulty accessing capital and are forced to operate on a cash-only basis. This raises the risks for money laundering, tax evasion, robbery and other crimes.

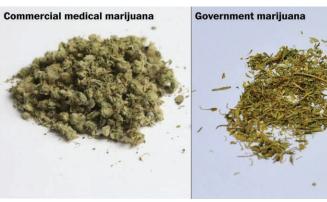
Recognizing this as a significant safety concern, the DOJ and the Financial Crimes Enforcement Network released guidance in February 2014 to banks that wish to provide services to marijuana businesses and avoid prosecution.

Despite this guidance many banks remain apprehensive about offering services until a permanent legislative change occurs, and most marijuana businesses continue to operate as cash-only enterprise. These impacts can apply to ancillary businesses serving this growing industry such as real estate, security and professional services. Even companies providing services to marijuana businesses mandated by state law have lost their bank accounts.

#### Medical Marijuana Research

In addition to being a tightly controlled Schedule I substance, marijuana is also regulated in accordance with a number of international treaties. Under the Single Convention on Narcotics Treaty, signatory governments are required to maintain monopoly control over the production and distribution of marijuana for research purposes.

In the United States, this has been implemented in the form of a single contract that the National Institute on Drug Abuse (NIDA) holds with the University of Mississippi, to grow all the marijuana used in federally legal research. Much of this work is basic research at the National Institutes of Health or by NIDA and limited to the negative



impacts of marijuana as an addictive drug. The marijuana provided by NIDA for research differs greatly from the marijuana that patients purchase at state-legal dispensaries, as seen in the photograph to the right.<sup>63</sup> This creates severe limitations for government-sponsored research.

In August of 2016, the DEA announced a policy change "to foster research by expanding the number of DEA-registered marijuana manufacturers" and is prepared to license additional

growers.<sup>64</sup> At the time of publication, the DEA has not made an application process available to researchers.

Following the 1996 legalization of medical marijuana in California, a National Institutes of Health panel of experts called for additional studies to properly evaluate marijuana's medical potential.<sup>65</sup>

In 1999, the Department of Health and Human Services issued guidance in response to questions about how non-federally funded researchers can conduct research to turn marijuana, or derivatives of marijuana, into a FDA regulated medicine. It established a system by which non-federally funded researchers could access the NIDA-grown marijuana at cost. This guidance includes a number of limitations and creates a unique review process that convenes each time an application is submitted. This review process determines scientific merit of an application. The researcher must also apply to the FDA, which approves applications to test new drugs. An Institutional Review Board will look at the ethics of researching with humans, and the DEA, which will need to issue a special Schedule I research license.

This needlessly duplicative review process comes with no time limits. Researchers have no idea how long they will wait for approval, or how long it will take to get marijuana.

The system has inhibited non-federally funded research, despite the fact that millions of patients are using medical marijuana nationwide. These barriers have prevented robust studies to inform the process by which a rescheduling determination could be made. This in turn allowed the FDA and National Academies of Science to conclude the evidence available for medical marijuana research was insufficient to be able to make a determination regarding possible therapeutic effects.

As a result, marijuana research is primarily



happening in other countries that allow the private grows of marijuana for research with proper licenses.

The federal government has taken small steps to ease the barriers, by increasing the supply of research grade marijuana, but this is nowhere near enough. The system needs to be completely changed. Bipartisan legislation, the Marijuana Research Act, would accomplish this objective.

A number of major health care organizations, such as the American Academy of Pediatrics and the American Medical Association agree that it is essential to change federal policies in order to better enable research. Robust knowledge of how and why marijuana is helpful and also where it may be harmful when used medicinally, is long overdue.

Veterans Access to Marijuana

One group of Americans – veterans – are particularly disadvantaged by the discrepancy in federal and state medical marijuana laws. Like many Americans, many veterans seek medical

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marijuana to treat conditions ranging from seizures, glaucoma, anxiety, chronic pain and nausea. There are also 23 states and the District of Columbia that allow physicians to recommend medical marijuana for the symptoms of Post-Traumatic Stress (PTS). A growing body of evidence suggesting that marijuana offers relief when other treatments have proven inadequate. The American public agrees, with 87% of voters supporting access to medical marijuana for veterans. The American public agrees, with 87% of voters supporting access to medical marijuana for veterans.

Despite increased availability of medical marijuana, in January 2011 the Department of Veterans Affairs (VA) issued Directive 2011-004 "Access to Clinical Programs for Veterans Participating in State-Approved Marijuana Programs". This specifically prohibits VA medical providers from completing patient forms seeking recommendations or opinions regarding participation in a state marijuana program. That means that if a veteran wants to use medical marijuana in a state where it is legal, they must either obtain it on the illegal market at their own expense or seek a separate recommendation from a physician outside of the VA.

Congress has agreed that veterans should not be forced outside of the VA system to seek a treatment that is legal in their state. The Veterans Equal Access appropriations amendment, which passed in both the House and Senate, would have allowed VA physicians the ability to offer a recommendation they think may meet the needs of their patient. Unfortunately this amendment was stripped from the final spending bill in conference committee – though it is likely to have even more support in the 115<sup>th</sup> Congress.

In April of 2016, the DEA approved a clinical trial for medical marijuana treatment for veterans. It is the first ever randomized controlled trial of whole plant medical marijuana for treatment of PTSD in US Veterans. This trial will gather data on safety and efficacy of four potencies with varying ratios of THC and CBD. It is also the first time a clinical trial intended to develop marijuana into a legal drug has received full approval from US regulatory agencies.<sup>71</sup>

#### Нетр

Hemp is widely used in a variety of consumer products in the United States. Current industry estimates report that U.S. retail sales of all hemp-based products is estimated at \$573 million per year and that hemp is used in over 25,000 products around the world.<sup>72</sup> Despite its proven industrial use in products such as paper, fabrics, insulation and more, current federal marijuana laws make it illegal to grow industrial hemp in the United States.

Here again, the states are ahead of the national, restricted approach: 31 states have passed laws removing barriers to cultivation of industrial hemp. Unfortunately, the majority of these states have not moved forward with implementing these laws due to the federal prohibition.

Given the negligible levels of THC in the product, the ban of industrial hemp is not only misplaced, it harms the economy by forcing companies to import raw hemp. Clearly, this is a missed opportunity for American farmers and related industries.

There have been a number of votes in Congress that have favored hemp cultivation. The most important was the passage of the Farm Bill in early 2014, in which Congress allowed state departments of agriculture and colleges and universities in legal hemp states to launch research

pilot programs with hemp.<sup>73</sup> This important step needs to be expanded upon to allow cultivation of industrial hemp across the country.

As a result of the Farm Bill, states like Kentucky, Colorado and Vermont have moved forward with implementing their industrial hemp pilot programs. In August 2016, the U.S. Department of Agriculture, in consultation with the FDA and DEA, issued a Statement of Principles regarding how industrial hemp is cultivated and used. However, there is still much ambiguity under the Trump Administration, since the Obama Administration's guidance could be adjusted at any time.

#### Environmental Challenges

Illegal outdoor cultivation of marijuana, often on public lands, poses significant environmental problems.

In 2013, illegal marijuana grows were found in 72 national forests in 22 states. These grows often show damage from the overuse of common or toxic chemicals banned in the United States, impacting wildlife, waterways and the plants around them. The significant water use for cultivation often draws water from streams and creeks that provide critical habitat for endangered species. Illegal marijuana grows have even been listed as a factor in the decline of endangered species.



As marijuana has become regulated at the state level, there has been increased effort to use less water and energy intensive cultivation techniques. Many in the industry are working to become leaders in sustainable agriculture, energy efficiency, and water usage.

#### Other Federal Challenges

As the states that have legalized adult-use of marijuana move forward, more and more questions will arise regarding differences between federal policy and state law. For example, there are questions about how to handle access to water rights controlled by the federal government in western states, if it is suspected that water is going to marijuana grows. The use of FBI background checks for marijuana businesses is another issue. Can the IRS or state governments charge additional fees to businesses that pay their taxes in cash? This is a regular policy for tax payments in cash, but is it fair when cash is often the only option available to marijuana businesses? With the current system, questions like these are inevitable and will ultimately be resolved by clarifying the treatment of marijuana at the federal level.

With this patchwork system, many patients who need marijuana for legitimate medical purposes often can't obtain it legally. Some are forced into the illegal market, facing uncertainty regarding availability and quality and risking illegal behavior. Simultaneously, medical marijuana programs have the potential to become safe havens for those looking to use the drug for relaxation or adultuse purposes. As more states move to legalize both medical and adult-use, and public acceptance

continues to grow, the problems will only become more complicated. Federal prosecutors and local law enforcement in each state often handle the situation differently, and the entire industry – an industry that many Americans support – remains clouded by uncertainty, illegitimacy, and fear.

# **Opportunities**

It is time to recognize and capitalize on decades of state-level progress and finally change federal policy.

While individual states remain the laboratories of innovation, the federal government must make sure that states, private businesses. and individuals are able to act in an environment that has coherent and consistent laws.

Many members of Congress are interested in these issues. They have wide ranging beliefs on how to proceed with marijuana policy going forward but they all agree that the current system is broken.

In 2016, Congressman Blumenauer joined colleagues in launching the first-ever, bipartisan Congressional Cannabis Caucus to explore the complex issues related to marijuana legalization. The purpose of the caucus is to educate members of Congress and their staff on the facts of marijuana use and national drug policy and work to pass comprehensive legislation to address the gap between federal and state marijuana laws.

The Congressional Cannabis Caucus is an important vehicle not just to demonstrate increased support, but to provide organized leadership to reform and ultimately abolish the federal prohibition on marijuana.

The 115<sup>th</sup> Congress should pursue each of the following options:



Tax and Regulate Marijuana

Considering the shift in public opinion and state level leadership in legalizing medical and adult-use marijuana, it's time that Congress end the federal prohibition on marijuana, removing it from the Controlled Substances Act entirely and create a regulatory and taxation framework to guide the industry, similar to the frameworks in place for alcohol and tobacco.

A specific tax on marijuana grown for all purposes should be imposed to help fund substance abuse dependency treatment, law enforcement, and help reduce the federal debt.

Revenue estimates from taxing marijuana vary due to uncertainties surrounding the existing marijuana market and how legalization and regulation would impact price and consumption habits. Any study of the fiscal impact should also include the savings generated by reduced expenditures on marijuana interdiction and enforcement.

This represents a unique opportunity to save ruined lives and wasted enforcement and prison funding, while simultaneously growing a new industry with new jobs and revenue that will improve the state and federal budget outlook.

Passing legislation to tax and regulate marijuana would represent a key part of a comprehensive approach to marijuana reform. Congress should pass additional legislation that would help to ease problems during this transitional period, such as specifically ensuring medical marijuana patient access, and addressing unfair tax and business challenges of all-cash operations.

Allow States to Enact Existing Marijuana Laws Without Federal Interference

The federal government needs to allow states to enforce their laws without fear of interference by removing barriers to marijuana distribution. Removing marijuana from the schedule of the Controlled Substances Act, paired with language protecting states' rights will ensure that patients and providers that operate in compliance with state law remain immune from federal prosecution.

Until then, Congress should pass legislation declaring that in a state where marijuana is legal, no provision of the Controlled Substance Act or the Federal Food, Drug and Cosmetic Act shall prohibit or restrict:

- The prescription or recommendation of marijuana for medical use by a medical professional;
- An individual from obtaining, manufacturing, possessing or transporting within their state, marijuana for medical adult-use purposes;
- A pharmacy or other entity authorized to distribute medical marijuana;
- An authorized entity from producing, processing, or distributing marijuana;

Taking such action will help ensure patients have safe access to medical marijuana, and ensure that states are free to enact comprehensive regulatory oversight of their programs without fear that they will be putting business owners and patients at risk of breaking federal law.

Reduce Barriers to Medical Marijuana Research

Congress should pass legislation to change the system by which non-federally funded researchers access marijuana. It should ensure that all researchers that receive FDA, Institutional Review Board (IRB) and DEA approval can access marijuana without further review. Congress should also work with the Administration to remove the current federal monopoly on production and instead to license private growers to supply marijuana for federally-approved research.

Over time, with increased access to research, marijuana-based drugs may be approved by the FDA and become part of the prescription drug supply available in the United States.

#### Allow Veterans Equal Access to Medical Marijuana

Congress should pass legislation to immediately remove barriers to veterans accessing medical marijuana in states where it is legal, allowing VA physicians to recommend medical marijuana to their patients and fill out associated forms, if they so choose.

Allow the Marijuana Industry to Operate in a Normal Business Environment

The existing medical marijuana industry and its expansion to include adult use of marijuana has and will continue to result in many new businesses facing the tax and banking problems that come with the territory.

Congress should immediately remove these tax and banking barriers to allow legitimate businesses to operate in states that have legalized marijuana for medical and adult-use.

To do this, Congress should amend the Internal Revenue Code to allow tax deductions for normal business expenses incurred by dispensaries and other marijuana businesses. This is how all other businesses operate and allowing such deductions will help to both legitimize the industry and make it more viable.

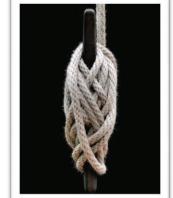
Congress should also protect banks from federal fines or seizures simply because they accept deposits from marijuana businesses. Currently, these businesses operate as cash-only enterprises which are high risk and ripe for abuse.

While the Obama Administration offered some guidance on this topic, many banks remain unsure or believe that without Congressional action, the risks to them remain too great. With definitive Congressional action, they can begin to function like normal businesses, making deposits, managing accounts and issuing paychecks.

#### Remove the Ban on Industrial Hemp

Congress took steps in 2013 and 2014 to allow for research on hemp in states that have approved it for industrial use. Many states have also used guidance regarding prosecution and state marijuana laws to move forward with their cultivation laws. This, however, remains a temporary solution.

Congress should completely remove the senseless federal ban on the large-scale cultivation of industrial hemp by passing legislation removing industrial hemp from the definition of marijuana. This would allow a new agricultural industry to flourish in the United States.



# The Path to Marijuana Reform

In 2017, Rep. Earl Blumenauer, with fellow Oregonian Sen. Ron Wyden, introduced "The Path to Marijuana Reform," a comprehensive legislative package that paves the way for responsible federal regulation of the legal marijuana industry. The package includes the following three bills:

#### Small Business Tax Equity Act

Under current law, businesses may generally deduct related business expenses for income tax purposes. In addition, businesses may be eligible to claim certain tax credits as provided under the tax code. Internal Revenue Code (IRC) section 280E provides that any person who sells Schedule I or Schedule II substances may not claim tax deductions or credits. Congress added this prohibition in 1982 after a drug dealer claimed expenses associated with selling narcotics as legitimate business expenses.

Because marijuana is a Schedule I substance under federal law. Marijuana businesses operating in compliance with state law may not deduct the common expenses of running a small business, such as rent, most utilities, and payroll. In addition, these businesses are barred from claiming tax credits, including those intended to incentivize energy efficiency, research and development, or hiring veterans and other disadvantaged groups.

The Small Business Tax Equity Act of 2017, a bipartisan effort with Sen. Rand Paul (R-KY) and Rep. Carlos Curbelo (R-FL) would create an exception to IRC section 280E to allow businesses operating in compliance with state law to claim deductions and credits associated with the sale of marijuana like any other legal business. While included in the Responsibly Addressing the Marijuana Policy Gap Act, the bill was also introduced as standalone legislation in the hopes it will be adopted as part of broader tax reform.

#### Responsibly Addressing the Marijuana Policy Gap Act

While the end goal is to remove marijuana from the Controlled Substances Act, the Responsibly Addressing the Marijuana Policy Gap Act would reduce the existing gap between federal and state law outlined in this report by allowing for a glide path to legalization.

Specifically, the bill would codify the role of federalism in marijuana policy by amending the Controlled Substances Act to exempt any person acting in compliance with state marijuana law from criminal penalties under the Controlled Substances Act. This includes (1) persons involved in the production, possession, distribution, and testing of marijuana; and (2) secondary vendors providing services to the marijuana industry such as legal representation, payment processing, advertising, security services, property leasing, and scientific and safety testing.

It would also correct some of the damage done by the war on marijuana by creating an expungement process for certain marijuana violations, ensuring access to public housing and

federal financial aid for higher education, and preventing deportation or denied entry to the U.S. solely for consuming marijuana in compliance with state law.

Additionally, for state-legal businesses, the bill would remove federal criminal penalties and civil asset forfeiture for individuals and businesses acting in compliance with state law and reduce barriers for state-legal marijuana businesses by ensuring access to banking, bankruptcy protection, and advertising.

Finally, it would remove unfair burdens by allowing veterans to have access to state-legal medical marijuana by include provisions of the Veterans Equal Access Act and protecting Native American tribes that enter into regulated marijuana markets from punishment under federal marijuana laws.

#### Marijuana Revenue and Regulation Act

The Marijuana Revenue and Regulation Act would responsibly deschedule, tax, and regulate marijuana. It would impose an excise tax on marijuana products similar to current federal excise taxes on alcohol and tobacco, escalating annually to a top rate equal to 25% of the sales price. Marijuana producers, importers, and wholesalers would be required to obtain a permit from the Department of Treasury. The marijuana industry would be regulated in a manner similar to how alcohol is regulated. Strict rules would prohibit sale or distribution of marijuana in states where it is illegal under state law.

# Conclusion

The path forward for a more sensible drug policy is clear. More than 315 million people live in jurisdictions that have endorsed the use of some form of marijuana. 65 million people now live in jurisdictions that have voted in favor of legalizing adult-use marijuana. More than 60% of Americans agree that it should be legal.

When this report was first written in 2012, there had been minimal action at the federal level to respond to these factors. The Administration was largely silent on how it would respond to state legalization of adult-use marijuana, and no chamber of Congress had voted successfully on a marijuana reform policy.

The American people were clearly far ahead of the government.

The last five years, however, have seen monumental progress on every front – at the state level with regulation and taxation, at the Administration level with its use of prosecutorial discretion in marijuana states, and in Congress with the introduction of over two dozen pieces of pro-active legislation in the House and Senate. Multiple marijuana-related reforms have passed the House of Representatives, some of which ultimately became law.

The 115<sup>th</sup> Congress is off to an encouraging start with the launch of the Congressional Cannabis Caucus, but there is much still to do. Marijuana should be legalized and regulated at the federal level, getting the federal government out of the way of reform. Making the government a helpful partner in regulation will make communities across the country safer.

In the absence of this broad reform, Congress can take action to ease the barriers to marijuana research and provide safe access to marijuana for patients, including veterans. These reforms can provide the emerging marijuana industry with some certainty and allow businesses the ability to deduct expenses and deposit money like all other businesses.

The current system is broken. It wastes resources and destroys lives, in turn damaging families and entire communities. Moving forward, it's essential that we build on recent progress to finally create truly rational marijuana policies for the 21<sup>st</sup> century.

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